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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/892,727	06/27/2001	Scott Swix	60027.0018USU1/BS01040	4789

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MERCHANT & GOULD BELL SOUTH CORPORATION  
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EXAMINER
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AUSTIN, SHELTON W

ART UNIT	PAPER NUMBER
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2623

MAIL DATE	DELIVERY MODE
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11/16/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

09/892,727

Applicant(s)

SWIX ET AL.

Examiner

Shelton Austin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-10,12-22,24-27 and 29-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-10,12-22,24-27 and 29-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/19/2007</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 08/16/2007 has been entered.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1, 2, 4-10, 12-22, 24-27 and 29-36 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 2, 4-10, 12-22, 24-27 and 29-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Middeke et al. (US 6445907) in view of Herrbach et al. (US 6269150).

Regarding claim 1, Middeke et al. ("Middeke") teaches a method for analyzing the operation of a media delivery device (Col. 2, lines 1-20), the method comprising the steps of:

determining whether a network connection is functional (by monitoring whether a service request is received from the service center 28; Col. 6, lines 1-15);

determining whether a 1st diagnostic agent is functional, in response to a determination that the network connection is functional (by detecting a service request at step 124, Col. 6, lines 17-18);

causing the 1st diagnostic agent to collect diagnostic data associated with the media delivery device (STB), in response to a determination that the 1st diagnostic agent is functional (gathering diagnostic information; Col. 6, lines 19-30);

analyzing the diagnostic data to determine an operational problem associated with the media delivery device (STB) (service center analyses the received diagnostic information; Col. 10, lines 60-63 and service technician remotely trouble-shoot and reconfigured the receiver; Col. 10, lines 35-55); and

receiving a command in the first diagnostic agent to perform at least one of rebooting the media delivery device, upgrading an operating system in the media delivery device, and performing a remedial action related to the network connection, in response to a determination that the network connection is not functional (col. 10, lines 35-62—commands are sent to the receiver to mitigate reported problems, the commands including resetting the receiver and resetting customer preferences to factory defaults);

Middeke further discloses upon the diagnostic information has been transferred to the center, the service center can send commands to the receiver to reset the receiver to factory default (Col. 10, lines 35-41).

Middeke does not clearly disclose "removing the 1st diagnostic agent", "uploading a second diagnostic agent to the media delivery device in response to a determination that the first diagnostic agent is not functional" and "removing the 2nd diagnostic agent."

Herrbach discloses, in similar art, that after each diagnostic process, a cleanup process is performed before another test case to run/upload (see Fig.2, step 42; Col. 5, lines 27-58).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Middeke to remove the diagnostic application after each process, as taught by Herrbach so to provide a robust automated testing system as suggested (Col. 2, lines 10-48).

Regarding claim 2, Middeke in view of Herrbach further discloses the step of uploading the first diagnostic agent to the media delivery device (STB) over an alternative network connection, in response to a determination that the network connection is not functional (reads on Middeke in which the remote technician at the remote service, i.e., workstation 30, by analyzing the diagnostic information received from the receiver, Col. 3, lines 40-Col. 15, the remote technician able to determine whether or not the network connection is functional. In view of the result, the remote

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technician able to reset the receiver to factory default including the first diagnostic agent that was pre-loaded by default based on the network communication status; Col. 10, lines 35-63; for example if the strength of the satellite transponder is weak, the only way to communicate between the receiver 24 and the remote service center 30 is through the communication line 32 of Fig. 1 so the technician able to troubleshoot the receiver 24).

Regarding claim 4, Middeke further discloses the step of remedying the operational problem (Col. 10, lines 35-42).

Regarding claim 5, "the step of uploading a second diagnostic agent to the media delivery device, in response to a determination that the network connection is not functional" is analyzed with respect to claim 1 in which Middeke's remote technician at the remote service, i.e., workstation 30, by analyzing the diagnostic information received from the receiver, Col. 3, lines 40-Col. 15, the remote technician able to determine whether or not the network connection is functional. In view of the result, the Middeke's remote technician in view of Herrbach able to uploading a second diagnostic agent to the media delivery device through another communication link.

Claim 6 is analyzed with respect to claim 1.

Regarding claim 7, Middeke further discloses wherein the performance problem is also associated with a 2nd device functionality connected to the media distribution device (Col. 3, lines 40-Col. 4, lines 15 that has plurality of status of plurality connected devices to the receiver, i.e., smartcard status.

Regarding claim 8, Middeke further discloses the media distribution device is a STB (see Fig. 2; Col. 4, lines 15-40).

Claim 9 is analyzed with respect to claim 1.

Regarding claim 10, Middeke further discloses wherein the intelligent diagnostic agent is executable in the system memory (Col. 6, lines 18-30).

Regarding claim 12, "wherein the diagnostic service center can determine whether the diagnostic agent is functional" is further by Middeke' as analyzed with respect to claim 1 in which the remote service, i.e., workstation 30, able to receive the diagnostic information from the receiver.

Regarding claim 13 is analyzed with respect to claim 1.

Regarding claim 14, Middeke further discloses wherein the communication link is a broadband communication (see Fig. 1).

Regarding claim 15, Middeke in view of Herrbach does not clearly disclose the use of an ADSL as communication link.

Official Notice is taken that the use of ADSL is notoriously well known in the art for telephone companies to offer "video dial tone" over twisted pair. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Middeke in view of Herrbach to use ADSL as communication so to provide to user an alternative way to receive video at high-speed over telephone twisted pair network.

Regarding claim 16, Middeke further discloses wherein the communication link is a satellite connection (see Fig. 1).

Claims 17 and 18 are analyzed with respect to claim 1.

Claim 19 is analyzed with respect to claim 2.

Regarding claim 20, Middeke further discloses a media delivery service provider operative to transmit a media content stream to a media distribution device (see Fig. 1).

Claims 20, 21, 25, 26 are analyzed with respect to claim 1.



Claim 22 is analyzed with respect to claim 2.

Claim 24 is analyzed with respect to claim 4.

Regarding claim 27, Middeke does not clearly disclose "prior to deleting the at least one 1st diagnostic software agent further comprising conveying at least one 2nd diagnostic software agent in response to detecting that the at least one 1st diagnostic software agent is not operational on the at least one device at the remote site."

Herrbach discloses, in similar art, prior to deleting the at least one 1st diagnostic software agent further comprising conveying at least a second diagnostic agent to the receiver in response to detecting that the at least one first diagnostic software agent is not operational (see Fig.2, step 42; Col. 5, lines 27-58).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Middeke diagnostic system to further uploading 2nd diagnostic agent, as taught by Herrbach so to troubleshoot or narrow down the cause of a failure.

Claim 29 is analyzed with respect to claim 2.

Regarding claim 30, Middeke further discloses wherein the at least one 2nd communication path comprises a wireless link (Col. 3, lines 30-32).

Regarding claim 31, Middeke further discloses wherein the wireless link comprises satellite communication (Col. 3, lines 30-32).

Regarding claim 32, Middeke in view of Herrbach further discloses wherein code related to the at least one 1st diagnostic software agent is stored in the at least one device at the remote site for diagnostic testing and is later removed to allow more storage during an operational condition of the at least one device (see analysis of claim 1).

Regarding claim 33, Middeke further discloses wherein the at least one first diagnostic software agent is interactive with a customer through a presentation device (Col. 4, lines 60-67+).

Regarding claim 34, Middeke (Col. 3, lines 40-Col. 4, lines 15) in view of Herrbach further discloses the step of entering identification of the media delivery device in a service log.

Regarding claim 35, Middeke (Col. 4, lines 48-Col. 5, lines 13) in view of Herrbach (see analysis of claim 1) further discloses wherein entering the identification of the media delivery device is performed autonomously by the diagnostic agent.

Regarding claim 36, Middeke in view of Herrbach (Col. 3, lines 15-21) further discloses "presenting a user interface over the media presentation device; and receiving input from a user via the user interface."

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelton Austin whose telephone number is (571) 272-9385. The examiner can normally be reached on Monday through Thursday from 8:00-5:30. The examiner can also be reached on Fridays from 9:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Grant, whose telephone number is (571) 272-7294, can be reached on Monday through Friday from 7:30-5:00. The supervisor can also be reached on alternate Fridays from 9:00-4:00. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Shelton Austin

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A handwritten signature in black ink, appearing to read 'Christopher Grant', is positioned above the printed name.

CHRISTOPHER GRANT  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600